

LAND COURT SYSTEM

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**FIRST RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF WEST LOCH FAIRWAYS**

This Declaration, originally executed on the 25<sup>th</sup> day of October, 1991 by THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, a body corporate and politic of the City and County of Honolulu, and WESTLOCH, INC., a Hawai'i corporation (hereinafter collectively called "Declarant"), and now restated and amended on the date stated below.

**WITNESSETH:**

WHEREAS, Declarant owned in fee simple that certain property known as West Loch Fairways situate at District of Ewa, City and County of Honolulu, State of Hawai'i, bounded by Fort Weaver Road and Pearl Harbor, more particularly as defined below; and

WHEREAS, Declarant or its agents developed said property with residences, community facilities, parks, open areas and a variety of uses by means of a planned community development which combined practical usefulness and economic benefit with aesthetic enjoyment resulting in an urban community, specifically distinct from a uniform, detached residential development, and the purpose of this Declaration is to promote and perpetuate such a development to meet the needs and demands of the population of the area and for the benefit of the City and County of Honolulu and State of Hawai'i; and

WHEREAS, Declarant declared pursuant to the "Declaration of Covenants, Conditions and Restrictions" dated October 25, 1991 (the "Declaration"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. 1862778 and noted on the Transfer Certificates of Title shown on the attached Exhibit "1", and also recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 91-151535, that the Property described was to be held, sold, conveyed, encumbered, leased, occupied and improved, subject to the West Loch Fairways Covenants, Conditions and Restrictions, meaning the limitations, restrictions, covenants and conditions set forth in the Declaration, all of which were established and declared and agreed to be for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These limitations, restrictions, covenants and conditions run with said Property and are binding upon all parties having or acquiring any right, title or interest in and to the Property or any part thereof, and shall inure to the benefit of the Declarant, the Association and each Owner thereof or any part thereof, and each successor in interest of such Owner; and

WHEREAS, the Declaration was amended by the "First Amendment to Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" dated February 10, 1992, recorded in said Office as Land Court Document No. 1888370 and also recorded in said Bureau as Document No. 92-020281; by the "Second Amendment to Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" dated January 30, 1992, filed in said Office as Land Court Document No. 1888371 and also recorded in said Bureau as Document No. 92-020282; by the "First Supplement to Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" dated October 30, 1995, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2288663 and also recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 96-016037; and by "Third Amendment of the Declaration of Covenants, Conditions and Restrictions of West Loch Fairways and By-Laws of West Loch Fairways Association" dated December 24, 1997, filed in said Office as Land Court Document No. 2451994 and also recorded in said Bureau as Document No. 98-056748; and

WHEREAS, Section 421J-7.5, Hawai'i Revised Statutes, authorizes the Board of Directors of the Association established by the Bylaws to restate the Declaration to include in it any amendments and to conform its provisions to the provisions of Chapter 421J, Hawai'i Revised Statutes, and any other statute, ordinance, rule, or regulation enacted by any governmental authority, by a resolution adopted by the Board of Directors; and

WHEREAS, at a meeting duly held on March 17, 2009 the Board of Directors resolved to restate the Declaration, pursuant to Section 421J-7.5, Hawai'i Revised Statutes, in the manner set forth herein;

NOW, THEREFORE, the Declaration is hereby restated to read as follows:

**FIRST RESTATEMENT OF THE DECLARATION OF COVENANTS AND  
RESTRICTIONS OF WEST LOCH FAIRWAYS**

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**ARTICLE I**

**DEFINITIONS**

Unless the context in this Declaration otherwise specifies or requires, the terms defined in this Article I shall for all purposes of this Declaration have the meanings herein specified:

**Architect:** A person registered to practice architecture, engineering and landscape architecture in the State of Hawai'i pursuant to Chapter 464, Hawai'i Revised Statutes, as amended.

**Articles of Incorporation:** The Articles of Incorporation of the Association have been duly filed with the Department of Commerce and Consumer Affairs on October 23, 1991 and may be amended from time to time.<sup>1</sup>

**Association:** The West Loch Fairways Association, a nonprofit corporation described in Article V, and its successors and assigns, including any unincorporated association. In the event that the Association is dissolved or liquidated, the term "Association" shall refer to the unincorporated association whose members shall include all Owners.<sup>2</sup>

**Association Members:** Each owner of a Lot shall be a member of the Association.

**Board:** The Board of Directors of the Association.

**By-Laws:** The By-Laws of the Association which have been adopted by the Association and may be amended from time to time.<sup>3</sup>

**City:** The City and County of Honolulu.

**Common Area:** The Greenbelt Lots and the Service Roads together with the portions of the Property (including easements, drainage and flowage areas and open space areas) owned in fee or leasehold by the Association for the common use and for the benefit of the Owners, together with all of the Improvements constructed thereon from time to time, which Common Area shall not be considered a Lot.

**Declarant:** Department of Housing and Community Development, Westloch, Inc., and their respective successors and assigns.

**Declaration:** This Declaration of Covenants, Conditions and Restrictions of West Loch Fairways.

**Design Committee:** The Design Committee created pursuant to Article IV of this Declaration.

**Design Committee Rules:** The rules adopted by the Design Committee pursuant to Section 4.03, which rules are subject to the Design Standards.

**Design Standards:** Those certain Design Standards set forth in Exhibits E, H, I, J, K, L, M, N, O, and P attached to the Declaration and incorporated herein, as amended by Declarant from time to time.<sup>4</sup>

**Developer:** Westloch, Inc. and any successor Developer designated by Declarant. Declarant may act as a Developer.

**Duplex Building:** A Duplex Building is defined as a building with two residential dwellings sharing a common integrated roof that does not have any separation or other delineation at the common property line between the two Duplex Lots; a "joint" wall constructed on either side of the common Duplex Lot property line separates the interior of the Duplex Building. There will be four different types of Duplex Buildings, the layout of each of which are attached to the Declaration as Exhibits A to D respectively. The following described Duplex Lots shall have constructed thereon the Duplex Building shown on the following Exhibits:

DUPLEX LOT NOS.	EXHIBIT	MODEL NAME
6541/6542	A	MIAMI/DAYTONA
6410/6411	A	DAYTONA/MIAMI
6394/6393	A	DAYTONA/MIAMI
6545/6546	B	BERKELEY/NEW ORLEANS
6599/6600	B	BERKELEY/NEW ORLEANS
6605/6606/6607/16/17	B	BERKELEY/NEW ORLEANS
6612/6613	B	BERKELEY/NEW ORLEANS
6752/6668	B	BERKELEY/NEW ORLEANS
6398/6397	B	BERKELEY/NEW ORLEANS

6500/6499	B	NEW ORLEANS/BERKELEY
6492/6491	B	BERKELEY/NEW ORLEANS
6392/6391	B	NEW ORLEANS/BERKELEY
6543/6544	C	NEW YORK/WASHINGTON
6610/6611	C	WASHINGTON/NEW YORK
6616/6617	C	WASHINGTON/NEW YORK
6671/6672	C	WASHINGTON/NEW YORK
6502/6501	C	WASHINGTON/NEW YORK
6498/6497	C	WASHINGTON/NEW YORK
6603/6604/18	C	WASHINGTON/NEW YORK
6494/6493	C	WASHINGTON/NEW YORK
6490/6489	C	NEW YORK/WASHINGTON
6408/6409/22	C	NEW YORK/WASHINGTON
6396/6395	C	NEW YORK/WASHINGTON
6390/6389	C	NEW YORK/WASHINGTON
6601/6602	D	LAS VEGAS/RENO
6608/6609	D	LAS VEGAS/RENO
6614/6615	D	RENO/LAS VEGAS
6669/6670	D	RENO/LAS VEGAS
6496/6495	D	RENO/LAS VEGAS
7084/7085	C	NEW YORK/WASHINGTON
7086/7087	A	DAYTONA/MIAMI
7088/7089	B	BERKELEY/NEW ORLEANS
7090/7091	C	NEW YORK/WASHINGTON
7092/7093	A	DAYTONA/MIAMI
7094/7095	B	NEW ORLEANS/BERKELEY
7096/7097	C	NEW YORK/WASHINGTON <sup>5</sup>
6721/6722	D	TAHOE/SIERRA
6723/6724	B	OAKLAND/CYPRESS
6725/6726	C	OLYMPIC/LONG ISLAND
6727/6728	D	TAHOE/SIERRA
6729/6730	C	LONG ISLAND/OLYMPIC
6731/6732	C	LONG ISLAND/OLYMPIC
6733/6734	D	SIERRA/TAHOE
6735/6736	C	OLYMPIC/LONG ISLAND
6737/6738	C	LONG ISLAND/OLYMPIC
7098/7099	A	SPANISH BAY/HARBOR TOWER
6880/6879	B	BERKELEY/CYPRESS
6878/6877	D	SIERRA/TAHOE
6876/6875	C	LONG ISLAND/OLYMPIC
6874/6873	B	OAKLAND/CYPRESS
6872/6871	D	SIERRA/TAHOE
6870/6869	C	NEW YORK/OLYMPIC
6868/6867	B	OAKLAND/CYPRESS
6866/6865	D	TAHOE/SIERRA
6864/6863	C	OLYMPIC/LONG ISLAND
6862/6861	B	CYPRESS/OAKLAND
6951/6952	A	HARBOR TOWER/SPANISH BAY
6953/6954	B	OAKLAND/NEW ORLEANS
6955/6956	C	LONG ISLAND/OLYMPIC
6957/6958	A	HARBOR TOWER/SPANISH BAY

6959/6960	B	OAKLAND/CYPRESS
6961/6962	C	LONG ISLAND/OLYMPIC
6963/6964	A	HARBOR TOWER/SPANISH BAY
6965/6966	B	BERKELEY/CYPRESS <sup>6</sup>

The Developer reserves the right to amend this Declaration without the consent of any other person or entity for the purpose of (a) substituting a new floor plan, interior, features, or exterior elevation (including one not currently set forth in the Declaration) for a Duplex Building, or (b) changing the type of Duplex Building to be built on a Duplex Lot. For example, the model name for Duplex Lot Nos. 7098/7099 may be amended from "Daytona/Miami" to "New Orleans/Berkeley" and the Exhibit designation changed from "A" to "B".<sup>7</sup>

**Duplex Lots:** The following is a list of every Duplex Lot:

LAND COURT LOT NOS.	LAND COURT MAP NOS.	FILE PLAN 2042 LOT NO.
6389-6398	565	
* 6408	566	22
6409-6411	566	
6489-6502	566	
6541-6546	569	
6599-6603	569	
* 6604	569	18
* 6605-6606	569	17
6607	569	16
6608-6617	569	
6668-6672	570	
6721-6738	570	
6752	570	
6861-6880	574	
6951-6966	576	
7084-7099	578	

\* denotes Land Court lots and Regular System (File Plan) lots that must be conveyed together.<sup>8</sup>

**Excavation:** Any disturbance of the surface of land (except temporarily for planting) which results in removal of earth or rock for a depth of more than twelve inches.

**Family:** (a) A husband and wife, together with his or her or their parents and children, all of whom shall be related by blood, marriage, or legal adoption, and domestic servants, maintaining a common household within a Residence; (b) one (1) or two (2) individuals, together with his or her or their respective parents, and children, all of which shall be related to such individuals by blood, marriage or legal adoption, and domestic servants, maintaining a common household within a Residence; or (c) a group of not more than four (4) individuals who are at least 18 years old and do not constitute a Family as provided in (a) or (b) above, maintaining a common household within a Residence. This definition of the word "family" shall not restrict the number of children under 18 years old who may live within a Residence, regardless of the children's relationship with adult occupants of the lot.<sup>9</sup>

**Fill:** Any addition of rock or earth materials which increases the elevation of the existing grade.

**Fiscal Year:** The fiscal year of Association presently ending December 31 of each year.

**Governmental Agency:** A department, division or agency of any federal, state or municipal government, except for Declarant, and any public or private utility.

**Greenbelt Lot:** Any Common Area for landscaping, pedestrian access, or park purposes is a "Greenbelt Lot". The following is a list of every Greenbelt Lot:

LAND COURT LOT NOS.	LAND COURT MAP NOS.	FILE PLAN 2042 LOT NO.
6400	565	
6402	565	
* 6503	566	21/25*
6548	569	
6560	569	
6570	569	
* 6580	569	3
6596	569	
6642	569	
* 6661/6662	569	20
* 6664/6665	569	1
6685	570	
6742	570	
6748	570	
6751	570	
6881	574	
6968	576	
6975	576	
7030	577	
7101	578	
7105	578	
7108	578	
7200	579	
7204	579	
7207	579	

\* denotes Land Court lots and Regular System (File Plan) lots that must be conveyed together.

\* In addition to the purposes listed above, Lot 6503/21/25 shall also be for cemetery purposes.<sup>10</sup>

**Improvements:** All buildings, outbuildings, grading, roads, drainage facilities, driveways, parking areas, loading areas, screening walls and barriers, fences, retaining walls, poles, signs, water lines, sewer facilities and pump stations, electrical and gas transmission and distribution facilities, irrigation facilities, hedges, windbreaks, plantings, planted trees and



shrubs, ponds, exterior illumination, and all other structures, installations and landscaping of any type or kind, whether on, above or below the surface of the Property.

**Initiation Assessment:** The fee assessed to each new Association Member pursuant to Section 6.02.

**Lot:** Lots include Duplex Lots and exclude Greenbelt Lots, Service Roads and Streets. The following is a listing of every Lot as defined herein:

LAND COURT LOT NOS.	LAND COURT MAP NOS.	FILE PLAN 2042 LOT NO.
6315-6398	565	
* 6408	566	22
6409-6413	566	
* 6414	566	24
* 6415	566	27
6416-6419	566	
* 6420	566	30
* 6421/6444	566	32
6422-6423	566	
* 6424/6445	566	33
* 6425/6446	566	34
6426-6427	566	
* 6428/6447	566	35
* 6429	566	37
6430-6433	566	
* 6434	566	38
* 6435	566	39
* 6438	566	28
6439	566	
* 6440	566	29
6441-6443	566	
* 6448/6507	566	40
6449-6502	566	
6541-6546	569	
6549-6554	569	
6556-6559	569	
6561-6564	569	
6566-6569	569	
6571-6574	569	
6576-6579	569	
* 6583/6633	569	7
* 6584/6632	569	8
* 6585/6631	569	9
6587-6588	569	
* 6589	569	12
* 6590/6627	569	13
6592-6595	569	
6597	569	
6599-6603	569	
* 6604	569	18

* 6605/6606	569	17
* 6607	569	16
6608-6617	569	
6619-6625	569	
6629	569	
* 6630	569	10
* 6635	569	5
6636-6641	569	
6643-6650	569	
6652-6659	569	
6668-6684	570	
6686-6740	570	
6752	570	
6772-6880	574	
6888	574	
6889	574	
6907-6966	576	
6976	576	
6977	576	
6979-7026	577	
7031-7033	577	
7035-7099	578	
7109	578	
7110	578	
7112-7199	579	
7210	579	

\*denotes Land Court lots and Regular System (File Plan) lots that must be conveyed together.<sup>11</sup>

**Maintenance Assessment:** Any assessment levied pursuant to section 6.03.

**Manager:** The person, corporation or other legal entity appointed to manage the Common Area, pursuant to Section 5.05.

**Member:** A Member of the Design Committee appointed pursuant to Section 4.01.

**Notice:** A notice delivered pursuant to Section 7.09.

**Operating Fund:** The fund created pursuant to Section 6.01.

**Owner:** The holder of the legal fee simple title to a Lot; provided, however, that for the purposes of Article III:

(a) Owner shall not include the Declarant or any Developer with respect to any Lot owned by the Declarant or Lot owned by any Developer; and

(b) Owner shall include, unless the context requires otherwise, the Family and lessees of any Owner.<sup>12</sup>

**Property:** The Lots and the Common Area excluding the Streets as shown on Exhibit F attached to the Declaration.

**Record:** With respect to any document or subdivision map, to record or file such document or subdivision map in the Bureau of Conveyances or in the Land Court of the State of Hawai'i.

**Recreational Facility:** Any Improvement used for or in connection with any recreational purpose or activity.

**Residence:** A single-family detached building or Duplex Building on a Lot used for residential purposes, together with a garage.<sup>13</sup>

**Service Road:** Any paved vehicular way constructed within or upon any portion of the Common Area, excluding any apron or other paved area constructed for the purpose of providing paved access from such way to any Lot. Service Roads may also be referred to as "alleyways". The following is a list of every Service Road:

LAND COURT LOT NOS.	LAND COURT MAP NOS.	FILE PLAN 2042 LOT NO.
6401	565	
6403	565	
* 6436/6510	566	23
6504	566	
6547	569	
6555	569	
6565	569	
6575	569	
* 6591/6626	569	14
* 6598/6618	569	15
* 6634	569	6
6651	569	
6666	569	
6741	570	
6743	570	
6747	570	
6749	570	
6887	574	
6967	576	
6969	576	
7102	578	
7104	578	
7107	578	
7201	579	
7203	579	
7205	579	
7209	579	

\*denotes Land Court lots and Regular System (File Plan) lots that must be conveyed together.<sup>14</sup>

**Rules:** The rules to be adopted pursuant to Section 5.06, as amended from time to time.

**Special Assessment:** Any assessment levied pursuant to Section 6.04.

**Streets:** Streets are lots that are dedicated to or retained by the City as public roads. Streets are not part of the Common Area and are not subject to the Declaration. The following is a list of every Street:

LAND COURT LOT NOS.	LAND COURT MAP NOS.	FILE PLAN 2042 LOT NO.
6399	565	
6404-6406	565	
6505	566	
* 6506/6508	566	31/36
* 6509/6437	566	26
* 6581/6582	569	4
* 6586/6628	569	11
* 6660/6663	569	19
6744-6746	570	
6750	570	
6882-6884	574	
6970-6974	576	
7027-7029	577	
7100	578	
7103	578	
7106	578	
7202	579	
7206	579	
7208	579	

\*denotes Land Court lots and Regular System (File Plan) lots that must be conveyed together.<sup>15</sup>

**Subdivision:** The division of any lot into two or more lots or Residences.

**Subdivision Map:** Any map showing a Subdivision recorded in the Bureau of Conveyances or in the Land Court of the State of Hawai'i.

**Visible from a Neighboring Lot:** With respect to any given object or activity, that such object or activity is or would be in any line of sight originating from any point within the adjoining Lot, excluding contiguous Lots owned by the Owner of the Lot involved, but including the Common Area and Service Roads, assuming that such adjoining Lot has a six foot high opaque plane at its common property line and an elevation equal to its actual elevation or the highest elevation of the ground surface of that portion of the Lot upon which such object or activity is located, whichever elevation is lower.

## ARTICLE II

### PROPERTY SUBJECT TO RESTRICTIONS

#### Section 2.01 WEST LOCH FAIRWAYS: INITIAL DEVELOPMENT.

The initial development shall be all of the Property and the same shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to this Declaration. The Property, together with such other real property from time to time annexed thereto and made subject to this Declaration pursuant to Section 2.02 shall constitute West Loch Fairways. The City reserves the right, without the consent, approval or joinder of any other person or entity, including but not limited to Developer, the Association or any Lot owner in West Loch Fairways Subdivision, to subdivide Lot 6890 as shown on Map 574 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i into Lots, Duplex Lots, Greenbelt Lots, Service Roads, Streets and such other lots as the City, in its discretion, deems necessary or appropriate. The City further reserves the right, after such subdivision has been filed with the Office of the Assistant Registrar of the Land Court, to supplement this Declaration in order to identify which of the lots into which Lot 6890 has been subdivided are Lots, Duplex Lots, Greenbelt Lots, Service Roads or Streets as defined herein and upon recording of such supplements, all rights, duties, privileges, restrictions and obligations appertaining to such Lots, Duplex Lots, Greenbelt Lots, Service Roads or Streets pursuant to this Declaration shall apply to the lots so designated.

#### Section 2.02 ANNEXATION OF SUBSEQUENT DEVELOPMENTS.

The City may, pursuant to the following provisions of this section, from time to time and in its sole discretion, annex to West Loch Fairways all or any part of the real property (not then constituting a part of West Loch Fairways) owned by it at the time of such annexation and situated in Ewa. The Association may also annex adjacent property upon approval by an affirmative vote of 3/4ths of all members at a meeting duly called for this purpose, written notice of which shall have been sent to all members not less than 30 days in advance of the meeting, setting forth the purpose of the meeting.

(a) The annexation of such property shall become effective when and only when the last of each of the following events occurs:

- (1) The City or Association shall have recorded a declaration, which may consist of more than one document, and which shall, among other things (aa) describe the real property to which it is to be so annexed to West Loch Fairways; (bb) set forth or refer to such additional or other limitation, restrictions, covenants and conditions applicable to such property as provided in paragraph (c) below; and (cc) declare that such property is held and shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to this Declaration; and
- (2) With respect to the real property described in such declaration, the City or Association shall have filed a subdivision map.

(b) Upon the annexation becoming effective, the property covered by such annexation shall become and constitute a part of West Loch Fairways.

(c) Any provision herein to the contrary notwithstanding, the declaration referred to in paragraph (a) above may, with respect to all or any part of the property described in such declaration, provide for or refer to one or more documents creating any or all of the following:

- (1) such new land classifications not then provided for in Section 3.01 and such limitations, restrictions, covenants and conditions with respect to the use thereof as the City may deem to be appropriate for the development of such property;
- (2) with respect to the land classification provided for in Section 3.01 such additional or different limitations, restrictions, covenants and conditions with respect to the use thereof as the City may deem to be appropriate for the development of such property; provided, however, that such additional or different limitations, restrictions, covenants, and conditions applicable to Common Area lying within such property shall not discriminate between Owners or their guests, or between Owners of such property and other Owners of any other property within West Loch Fairways, and/or
- (3) a Declaration of Restrictions, subordinated to this Declaration and applicable exclusively to a specified area.

This Declaration as applicable to such property upon the annexation thereof unto West Loch Fairways, shall be deemed to include any and all additions and modifications thereto authorized by subparagraphs (1) and (2) above and set forth or referred to in such said declaration.

(d) No property, except that described in said Exhibit F and hereby made subject to this Declaration and except that specifically annexed as hereinbefore provided shall be deemed subject to this Declaration, whether or not shown on any subdivision map filed by City or described or referred to in any document executed and/or recorded by Declarant or the City. No designation of any parcel, lot or other area on any map filed by City as a Lot, Common Area, Service Road, Street, school or park or as any other type of parcel, lot or area, shall be deemed to be a dedication or commitment or representation that such parcel, lot or area is or will be used, devoted to or restricted to such use, except with respect to parcels, lots or areas specifically described in said Exhibit F, or specifically later annexed as aforesaid, and so designated on a subdivision map for such use, nor shall any Owner, or the public, or any public body or agency or any other person acquire any interest or rights therein by reason of such designation or filing, except as aforesaid. Nothing herein or in any amendment hereto shall be deemed to be a representation, warranty or commitment that the City will commit or subject to this Declaration any land it may now own or hereafter acquire other than that described in said Exhibit F or such amendment.

## ARTICLE III

### **LAND CLASSIFICATIONS AND RESTRICTIVE COVENANTS**

#### Section 3.01 LAND CLASSIFICATIONS.

All land within West Loch Fairways has been and shall be classified into one of the following areas: (a) Residential Lots; (b) Common Area.

#### Section 3.02 RESIDENTIAL LOTS: USES AND RESTRICTIONS.

Each Lot shall be for the exclusive use and benefit of its Owner, subject, however, to the following covenants, conditions and restrictions:

(a) Subject to subsection 3.02(ii) below, only one Family (including domestic servants and transient guests) shall occupy each Lot, and each Owner shall construct only one detached or duplex single-family Residence (which may include a guest room without a kitchen connected to the main dwelling) on any Lot designated for single-family residential purposes.<sup>16</sup>

(b) No Owner other than Declarant or Developer shall make any Improvement or perform other work which alters any Lot in any way from its natural state or improved state existing on the date such Lot was first conveyed in fee by the Declarant or Developer to the Owner of such Lot, except in compliance with the provisions of Section 3.03.

(c) Each Owner shall use his Lot exclusively for residential purposes, and shall not use any building or structure on a Lot as a tenement house, rooming house or apartment house, and shall not use any Lot or structure on a Lot for or in connection with the conduct of any trade or business; provided, however, that nothing in this paragraph (c) shall be deemed to prevent:

- (1) any artist, artisan or craftsman from pursuing his artistic calling upon the Lot, if such artist, artisan or craftsman also uses such Lot for residential purposes, is self-employed and has no employees working on such Lot, and does not sell or offer any work of art for sale to the public on the Lot;
- (2) Declarant or any Owner from renting the Residence on any Lot from time to time, subject, however, to this Declaration; or
- (3) Declarant or a Developer from operating a model home/temporary sales office including parking area from any Lot.

(d) Each Owner shall maintain all Improvements erected on his Lot and all landscaping and vegetation planted on such Lot from time to time in good and clean condition and repair and in such manner as not to create a fire, safety, or health hazard to West Loch Fairways or any part thereof, at such Owner's sole cost and expense. The Owner of each Lot shall maintain in a neat and attractive condition any planting strip or portion thereof lying between the sidewalk and the Street bordering such Lot.

(e) Each Owner of a Lot will maintain in good repair any fence or wall along any Street boundary of his Lot which had been erected by Declarant or Developer, and will also maintain any fence or wall erected by Developer on his Lot. Each Owner with a fence or wall

along such a common boundary shall be liable to the Owner of the adjoining Lot for half the cost of maintenance or repair of such fence or wall incurred by such Owner of the adjoining Lot. No additional front yard fencing will be allowed.

(f) No Owner shall subdivide or consolidate and re-subdivide a Lot or Lots to create additional residential Lots, except pursuant to the provisions of Section 7.04.

(g) No Owner shall place or use exterior speakers, horns, whistles, bells or other sound devices on any Lot, except security devices used exclusively to protect the security of the Lot and Improvements thereon.

(h) No Owner or occupant shall keep or maintain any animals on any Lot other than a reasonable number of generally recognized house pets for such Owner's or occupant's personal pleasure and not for sale or other commercial purposes. No Owner or occupant shall keep or maintain fowl or birds, other than canaries, parakeets and other songbirds on any Lot. No Owner or occupant shall keep or maintain animals or birds which are a nuisance to neighbors. The Board may grant reasonable exemptions to this subsection pursuant to subsection 3.02(ii) below.<sup>17</sup>

(i) No Owner shall erect any sign upon any Lot, including without limitation, commercial, political or similar signs, Visible from a Neighboring Lot except:

- (1) such signs as may be required by legal proceedings;
- (2) one or more residential identification signs having a maximum combined area of one square foot per Lot;
- (3) during the construction of any Residence or other improvement, a job identification sign having a maximum face area of six (6) square feet and of the type usually displayed by contractors, subcontractors, financial institutions and tradesmen; and
- (4) not more than one "For Sale" or "For Rent" sign having a maximum area of three (3) square feet, such sign to refer only to the Lot on which it has been placed.

(j) No Owner shall keep, place or maintain any house trailer, mobile home, permanent tent or similar facility or structure upon any Lot at any time; provided, however, that this paragraph shall not prevent an Owner from maintaining temporary construction shelters for a period not to exceed one year to be used exclusively in connection with the construction of any work or Improvement permitted in Section 3.03.

(k) No Owner shall keep, place or maintain any truck of more than one ton capacity upon any Lot in such a manner that such truck is Visible from a Neighboring Lot; provided, however, that this paragraph shall not prevent an Owner from maintaining construction equipment for a period not to exceed one year to be used exclusively in connection with the construction of any work or Improvement permitted by Section 3.03.

(l) No Owner shall construct, place or maintain any accessory structures or buildings upon any Lot prior to the construction of the main structure of the Residence; provided, however, that this paragraph shall not prevent an Owner from maintaining a



temporary construction shelter for a period not to exceed one year to be used exclusively in connection with the construction of any work or Improvement permitted in Section 3.03.

(m) No Owner shall construct, reconstruct or repair any trailer, vehicle or boat upon any Lot in such a manner that such construction, reconstruction or repair is Visible from a Neighboring Lot, nor shall an Owner maintain any vehicle not in good operating condition upon any Lot so as to be Visible from a Neighboring Lot; provided that this paragraph shall not prevent an Owner from performing maintenance work and minor repairs on his own trailer, vehicle or boat in his garage. Without limiting any other remedy set forth in this Declaration, the Association shall have the right to enter any Lot to remove any trailer, vehicle or boat being constructed, reconstructed or repaired in violation of this Section to a public dump, a repair shop, or a storage yard. The Owner of the Lot shall be responsible for all costs involved (whether or not he is the owner of the removed trailer, vehicle or boat) and shall pay to the Association all costs incurred. Neither the Association nor its agents shall be liable for trespass or for invasion of privacy, or for conversion or any damages for the removal of such trailer, vehicle or boat.

(n) No Owner shall leave garbage or trash receptacle(s) Clearly Visible from any Neighboring Lot, Street or Alleyway. Receptacles must be removed from the trash collection area set by the City authorities and shall maintain trash receptacles screened from view or within Lots fenced in areas. As for Lots that do not have privacy fencing or have wrought iron fences, Owner shall store receptacle(s) within the building envelope footprint (directly under the roofline of the dwelling). No accumulated waste plant materials will be permitted on any Lot, except as part of an established compost pile maintained in such a manner as not to be Visible from neighboring Lot.<sup>18</sup>

(o) No Owner shall openly store furniture, fixtures, appliances and other goods and chattels not in active use so as to be Visible from a Neighboring Lot, and no Owner shall keep outside clothes lines or other outside clothes drying or airing facilities except within a fenced service yard and not Visible from a Neighboring Lot.

(p) No Owner shall permit any exterior fires, except barbecue and imu fires, or permit any condition on his Lot which creates a fire hazard.

(q) No vehicular access is permitted from any Lot to a Street over a Greenbelt Lot or over a boundary which is indicated on the subdivision map covering the Lot to have restricted access. No Curb shall be cut on any Street, Service Road or Greenbelt Lot.

(r) No Owner shall park a motor vehicle on any sidewalk area or on any Common Area or on any portion of a Lot, except in a garage or on a paved driveway area within the Owner's<sup>19</sup> Lot. No Owner shall keep any motor vehicle on any Lot unless such motor vehicle is in operating condition, is currently registered with the Department of Motor Vehicles of the City and bears a current safety inspection sticker. No Owner shall keep any boat, trailer or truck camper on any Lot except in a garage.

(s) No Owner shall use a garage for other than the parking of motor vehicles and boats, unless the garage is enclosed so as not to be Visible from a Neighboring Lot and normally kept closed.

(t) No Owner shall violate or permit the violation on his Lot of any applicable law or ordinance pertaining to zoning, buildings, fires, signs or other matter relating to the use and development of his Lot.

(u) No Owner shall undertake an activity upon any Lot or in or about any Lot which is unlawful or would unreasonably disrupt or impair the privacy and quiet enjoyment of any other Lot or Owner thereof.

(v) No Owner shall construct any building or structure between the Greenbelt Lot or Street boundary of the Lot and any applicable building setback line along such boundary.

(w) No Owner shall apply highly reflective materials on exterior wall surfaces or use mirror-coated glass.

(x) No Owner shall finish any roof with built-up tar and gravel.

(y) No Owner shall install metal roofing or metal siding, and no Owner shall install fuel tanks on any Lot which are Visible from a Neighboring Lot.

(z) No Owner shall install or maintain permanent exterior electric lighting of any sort having a light source which is Visible from a Neighboring Lot unless the light source was installed by Declarant or a Developer. No Owner shall install or maintain any antenna which is Visible from a Neighboring Lot except that an Owner may install an antenna not exceeding ten (10) feet in height above existing grade if such antenna is not visible from the adjacent Street, except as provided by Section 207 of the Telecommunications Act of 1996 and the rules adopted by the Federal Communications Commission pursuant to that section, as amended.<sup>20</sup>

(aa) All telephone and electric power lines, water pipe lines and all other conduits for utilities shall be installed underground when outside the walls of the Residence.

(bb) No Owner other than Declarant or a Developer shall remove any tree within 25 feet of the property line of any Lot bordering the Street without the prior approval of the Design Committee.

(cc) No Owner other than Declarant or Developer shall plant trees within any setback area established in the Design Standards without the prior written approval of the Design Committee.

(dd) No Owner shall use salvaged lumber or other material in any construction on any Lot.

(ee) If due to the unusual location, size or topography of a particular Lot, an Owner cannot reasonably build a Residence without violating a specific provision of this Section 3.02, the Board shall have the authority, with the prior written approval of the Design Committee, to grant a variance from such specific restriction permitting such Owner to build and occupy a Residence without regard to the specific Restriction.

(ff) The Association shall have the rights set forth in Section 5.05 with respect to each Lot.

(gg) During the course of development and construction on any Lot, the terms of this Section 3.02 will be waived for Declarant and Developer to the extent necessary to permit construction of a Residence pursuant to plans approved by Declarant.

(hh) Each Owner shall maintain all hedges and other plantings on his Lot planted by the Declarant.

(ii) Discrimination prohibited. The Association shall not engage in any prohibited discrimination. The Lot Owners adopt the following provisions to implement that policy, which shall apply regardless of any contrary requirement in the Association documents:

- (1) In granting or withholding any approval or consent required under the Association documents, the Association shall avoid any prohibited discrimination.
- (2) In enforcing any requirement of the Association documents, the Association shall avoid any prohibited discrimination against children, particularly in evaluating any request relating to occupancy restrictions or leasing or renting any unit located in West Loch Fairways.
- (3) The Association may suspend any requirement of the Association documents which, if enforced, would result in prohibited discrimination. If the Association suspends any requirement which can be amended only with Lot Owner approval, the Board shall propose the amendment or deletion of the requirement at the next meeting of the unit owners, whether annual or special. The Board or the unit owners may call a special meeting of the unit owners for that purpose, in compliance with the Bylaws.
- (4) A disabled occupant of West Loch Fairways may keep a guide dog, signal dog, or other trained animal required because of the occupant's disability. If such an animal causes a nuisance, the occupant will be given a reasonable opportunity to resolve the problem by measures which fall short of removing the animal from West Loch Fairways. If the Association determines those measures have been unsuccessful, it may require removal of the animal. If the Association requires removal, the occupant will be allowed reasonable time to obtain a suitable substitute animal. During that time, the animal creating the nuisance will be allowed to remain at West Loch Fairways, provided its continued presence does not create an unreasonable imposition on any other occupant. In addition, a disabled guest of a unit owner or occupant may bring a guide dog, signal dog, or other animal required for assistance in West Loch Fairways, provided the animal does not cause a nuisance or unreasonable disturbance.
- (5) At their own expense, disabled occupants may: (aa) make reasonable modifications to a unit or the common areas; and (bb) have reasonable exemptions from requirements of the Association documents, to enable the occupants to have full use and

enjoyment of West Loch Fairways. A disabled occupant requiring a modification or exemption shall submit a written request to the Association specifying the nature of the request and why it is necessary. The Association shall not unreasonably withhold or delay its consent to the request, and any such request shall be deemed to be granted if not denied in writing, within forty-five (45) days after the Association receives it.

As used in this subsection: "Prohibited discrimination" means any discrimination prohibited by any Federal or State law or any ordinance of the City and County of Honolulu. "Association documents" means this Declaration, the Bylaws, House Rules, or any other documents of the Association.<sup>21</sup>

**Section 3.03 RESIDENTIAL LOTS: CONSTRUCTION AND ALTERATION OF IMPROVEMENTS: EXCAVATIONS**

An Owner may construct, reconstruct, refinish, alter or maintain any Improvement upon, under or above any Lot or may make or create any Excavation or Fill thereon, or may make any change in the natural or existing surface drainage thereof, or may install any utility line (wire or conduit) thereon, and subject to the Design Committee Rules, to the Design Standards set forth in Exhibit E, and to all provisions of this section:

(a) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any such Improvement for which the Owner has obtained approval from the Design Committee pursuant to this Section 3.03:

- (1) No Owner shall create any Excavation or Fill which would be Visible from a Neighboring Lot; and
- (2) No Owner shall install a power, telephone or other utility line (wire or conduit) on or under any Lot which would be Visible from a Neighboring Lot. The Association shall, in the event of any violation of the provisions of this subsection, restore such Lot to its state existing immediately prior to such violation, including the removal of any unauthorized construction or alteration. The Owner of the Lot shall reimburse the Association for all expenses incurred by the Association in performing any curative action under this subsection.

(b) Any Owner proposing to construct, reconstruct, refinish or alter any part of the exterior of any Improvement Visible from a Neighboring Lot or perform any other work which requires prior written approval of the Design Committee, shall apply to the Design Committee for approval in the following manner:

- (1) In the case of exterior Improvements having a cost exceeding \$25,000, (as this sum may be amended from time to time by the Design Committee, with the approval of the Board):
  - (i) The Owner shall submit to the Design Committee prior to construction preliminary plans, prepared by an Architect showing the Improvements in sufficient detail including

dimensions. The Design Committee shall review and shall either approve or disapprove such preliminary plans in writing within forty-five (45) days after submission, and in the event of disapproval, shall state in writing the reasons for disapproval. The Design Committee's failure to approve or disapprove the preliminary plans within said forty-five (45) day period shall be deemed approval.

- (ii) Following the approval of the preliminary plans, the Owner shall submit the final plans and specifications of the proposed Improvements to the Design Committee, in duplicate, including where appropriate, a plot plan showing easements, set back and contour lines, the location of all existing and/or proposed Improvements, the proposed drainage plan, the proposed sewer lines, the location of all existing trees having a height in excess of six-feet or a trunk measuring six-inches or more in any diameter at ground level and indicating which (if any) the Owner plans to remove, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. The Owner shall also indicate his proposed construction schedule, and shall pay a reasonable fee as established by the Design Committee for plan review and inspection. The Design Committee shall review and shall either approve or disapprove the final plans and specifications in writing within forty-five (45) days after submission, and in the event of disapproval shall state in writing the reasons for disapproval. The Design Committee's failure to approve or disapprove the final plans within said forty-five (45) day period shall be deemed approval. Notwithstanding the restrictions in Section 3.03 (d) below, the Design Committee shall not disapprove any final plans and specifications on account of any matter previously presented and approved in the preliminary plans.

- (2) In the case of exterior Improvements having a cost of \$25,000 or less (as this sum may be amended from time to time by the Design Committee, with the approval of the Board) or refinishing/repainting, the Owner shall submit to the Design Committee prior to construction final plans and specifications for the proposed Improvements, including where appropriate a plot plan showing easements, set back and contour lines, the location of all existing and proposed Improvements, the proposed drainage plan, the proposed sewer lines, the location of all existing trees having a height in excess of six feet or a trunk measuring six inches or more in any diameter at ground level and indicating which (if any) the Owner plans to remove, and the location of all proposed utility installations. The plans and specifications shall indicate all exterior materials, finishes and colors to be used. In

case of refinishing or repainting only, the Owner shall submit a request listing the finish and/or color to be used. The Owner shall also indicate his proposed construction schedule, and shall pay a reasonable fee as established by the Design Committee for plan review and inspection. The Design Committee shall review and shall either approve or disapprove the final plans and specifications in writing within forty-five (45) days after submission, and in the event of disapproval shall state in writing the reasons for disapproval. The Design Committee's failure to approve or disapprove within said forty-five (45) day period shall be deemed approval.

(c) No approval of the Design Committee shall be required for any interior Improvements or alterations, nor shall approval of the Design Committee be required for reconstruction or refinishing in accordance with the plans for Improvements previously made by Declarant or a Developer or previously approved by the Design Committee.

(d) The Design Committee's approval shall be effective for a period of one (1) year and shall be deemed revoked if the Owner shall not have commenced the approved construction, reconstruction, refinishing or alteration within the one (1) year period and shall not thereafter complete the same with reasonable diligence. If the Owner shall not so commence within the one (1) year period, then, prior to commencing any work, the Owner shall be required to resubmit such final plans and specifications for approval, and the Design Committee shall either approve or disapprove the resubmitted final plans and specifications in writing within forty-five (45) days after resubmission and in the event of disapproval shall state in writing the reasons for disapproval. The Design Committee's failure to approve or disapprove within said forty-five (45) day period shall be deemed approved. The Design Committee may require another inspection fee. The Design Committee may disapprove the resubmitted final plans notwithstanding the fact that such plans had earlier received preliminary or final approval.

(e) The Owner shall give written notice to the Design Committee upon the completion of construction of any Improvements or other work for which plans and specification were approved by the Design Committee pursuant to this Section. The Design Committee shall inspect such Improvements or other work within (30) days. If the Design Committee finds that such Improvements or other work were not constructed in substantial compliance with the approved plans and specifications, the Design Committee shall notify the Owner of such non-compliance and require the Owner to remedy such non-compliance within sixty (60) days from the date of notice. If the Owner shall fail to remedy such non-compliance within said sixty (60) day period, or if a longer time is reasonably required, and the Owner has failed in good faith to commence a remedy within said sixty (60) day period and is not diligently pursuing a remedy, the Design Committee shall notify the Association of such failure, and the Association may take any reasonable steps to remedy the non-compliance or to restore the Lot to its pre-existing condition and may assess the Owner for all expenses incurred. The Design Committee's failure to notify the Owner of any such non-compliance within thirty (30) days after receipt of such notice of completion shall be deemed approval of completion in accordance with said approved plans.

(f) The provisions of this Section 3.03 to the contrary notwithstanding, no approval by the Design Committee shall be required for any construction done by or for Declarant or any Developer, including without limitation any construction of Residences by Declarant or any Developer and any work done by Declarant or any Developer, their

representatives, agents, employees or contractors in connection with the construction of subdivision Improvements required by the State of Hawai'i or the City and County of Honolulu or in connection with the construction of any roadways, drains, signs or landscaping or any electrical, telephone, cable television, communication, water, sewer or other utilities.

(g) The Design Committee shall have no power to vary any of the standards and restrictions set forth in this Declaration, except as may be permitted herein or authorized by the Board. The Association shall have the right to commence and pursue any remedy provided in this Declaration for any violation by an Owner of this Declaration, whether or not the Design Committee shall have approved plans and specifications.

(h) In reviewing plans and specifications, the Design Committee shall consider whether the proposed Improvement:

- (1) is compatible as to the quality, type of material, workmanship and external design with existing structures and other Improvements in the area, and location of the proposed Improvement is compatible with respect to topography and ground elevation;
- (2) conforms to the Design Standards;
- (3) constitutes a suitable and adequate development of the Lot;
- (4) is, in the case of the Residence, comparable to other Residences in the area in value and design; and
- (5) will not, because of its design, unreasonably interfere with the light and air to or view from adjoining Lots.

(i) The Design Committee will interpret qualitative requirements i.e., "reasonably", "highly", etc.

(j) Aesthetic merit will be in the sole judgment of Design Committee.

#### Section 3.04 DUPLEX LOT/BUILDING

Each Duplex Lot/ Building shall:

(a) Have a perpetual easement in, on, over and through its companion Duplex Lot for support, maintenance, repair and replacement of the joint wall, the single wall, meter or other measuring device, or the roof, rafters, roof frame, felt undercovering, shingles, and gutters as any portion thereof, including the portion of the roof of the Duplex Building shown on the applicable Exhibits A to D that extends over or into the companion Duplex Lot together with a perpetual easement in, on, over and through the companion Duplex Lot for ingress and egress in order to perform the repair, maintenance or replacement work or to read, measure or service any meter or other measuring device for one residence of a Duplex Building.

For example, the Duplex Building that was built on Lots 6601 and 6602 is shown on Exhibit D. The single wall portion of the Duplex Building on Lot 6602 extends into Lot 6601 as does the portion of the roof that covers the single wall. Thus Lot 6602 has a perpetual easement in, on, over and through Lot 6601 for support, maintenance, repair and replacement purposes and vice-versa. In addition, Lot 6602 has a perpetual easement over Lot 6601 to

repair, maintain and replace the single wall portion of the Duplex Building that extends into Lot 6601.

(b) Each owner of a Duplex Lot shall have the responsibility to repair, maintain and replace all Improvements located on his/her/their Duplex Lot, including but not limited to the driveway, landscaping and the portion of the Duplex Building that is constructed within his/her/their lot; except that the owner of the Duplex Lot in which a single wall is constructed as part of the Duplex Building shall have the responsibility to repair, maintain and replace the single wall and provided further that the owner of the companion Duplex Lot into which the single wall extends has the right but not the obligation to paint the portion of the single wall that extends into his/her/their lot; and provided further that issues of mutual interest between two Duplex Lot owners, such as when, how and what colors to repaint the Duplex Building or when, how and what materials to use and the design and color of any re-roofing of the Duplex Building shall be decided by mutual agreement between the two Duplex Lot owners.

(c) Each owner of a Duplex Lot shall be responsible for any damage that he/she/they cause or causes to the portion of the Duplex Building that is constructed on the companion Duplex Lot. Each owner of a Duplex Lot is encouraged to obtain fire insurance from the same insurance company in order to expedite settlement of claim due to any loss or damage that may occur.

(d) In case of any encroachment of the joint wall or the single wall or the yard or driveway divider from one Duplex Lot into its companion Duplex Lot (no matter what the cause), a valid easement for such encroachment, and repair, maintenance and replacement thereof shall and does exist for so long as such encroachment continues. No Duplex Lot owner shall be required to correct such encroachment until such time as the encroachment can be corrected due to repair or replacement of the area of encroachment.

(e) In the event of any dispute or disagreement between owners of a Duplex Lot, the Owners shall first submit their dispute to the Mediation Center of the Pacific for mediation. If the Owners cannot settle the dispute by mediation, then the Owners shall submit the dispute to the American Arbitration Association for binding arbitration before one arbitrator whose decision shall be final, binding and enforceable pursuant to Chapter 658A, HRS, as amended.<sup>22</sup>

#### Section 3.05 COMMON AREA: USES: RESTRICTIONS.

Non-exclusive use of the Common Area shall be reserved equally to all Owners, except as specifically provided herein, and every Owner shall have a right and easement in and to the Common Area except for the Service Roads, which easement shall be appurtenant to every Lot, subject, however, to the following restrictions:

(a) Use of the Common Area shall be subject to the Rules.

(b) Use of the Common Area shall be subject to such easements and rights-of-way then existing or reserved therefrom at the time of conveyance thereof to the Association, and to such other road and public and private utility easements as may from time to time be granted or conveyed by the Association or by the Declarant, pursuant to the provisions of paragraph (c) of Section 5.05. The Owner of each Lot that has a driveway that abuts a Service Road shall be responsible to repair and maintain such Service Road together with other Owners whose driveways abut such Service Road. The cost to repair and maintain such Service Road shall be borne equally by all Lots that abut such Road; provided, however that in the event any



damage or loss is caused by one Owner or group of Owners, such Owner or group of Owners shall be solely responsible for the cost of repairing such damage or loss jointly and severally. If the responsible Lot or Lots fail to adequately repair and maintain the Service Road or fail to pay for same, the Association shall have the right (1) to enter the Service Road to repair and maintain such Service Road and charge each responsible Lot its prorated share of the cost of such repair and maintenance as a special assessment, or (2) charge the cost of the repairs to the responsible Owner or group of Owners who caused the damage or loss, jointly and severally, as a special assessment. Declarant reserves the right to (1) install and construct Improvements including, but not limited to, drainage pipes and appurtenances, manholes and appurtenances, water pipes and appurtenances, electrical, telephone, television and other utility lines, poles, wires and appurtenances, subbase, base course and asphaltic concrete in, on or over any portion of the Common Area, including any Service Road, (2) grant or dedicate to others, including any person or corporation, public utility companies and governmental entities, a non-exclusive easement or license for road, drain, water, sewer or electric, cable television, telephone or other utility purposes over, under and across the Common Area, including any Service Road, and (3) amend, cancel, relocate or surrender any easement previously granted over, under or across the Common area, including any Service Road. In the event that any dispute or disagreement arises between an Owner or group of Owners or the Association concerning this Section 3.05(b), the dispute shall first be submitted to the Mediation Center of the Pacific for mediation. If the dispute cannot be settled by mediation, then the dispute shall be submitted to the American Arbitration Association for binding arbitration before one arbitrator whose decision shall be final, binding and enforceable, pursuant to Chapter 658A, HRS, as amended.<sup>23</sup>

(c) No Improvement, Excavation or other work which in any way alters any Common Area from its natural state or existing state on the date when such Common Area was conveyed to the Association, shall be done except in strict compliance with provisions of Section 3.06.

(d) Except to the extent otherwise permitted pursuant to the provisions of paragraph (b) above and Section 3.06, the Common Area shall be exclusively devoted to uses as determined by the Association and in particular, the following restrictions shall apply:

- (1) There shall be no camping in Common Area, except as permitted by the Board by written license.
- (2) There shall be no fires started in Common Area, except fires started and controlled by the Association incidental to the maintenance of the Common Area.
- (3) Subject to subsection 3.02(ii) above, no animals shall be permitted on Common Area except generally recognized house pets under the control of their Owners.<sup>24</sup>

(e) The right to use and enjoy the Common Area shall extend to Owners and families and invitees of all Owners.

Section 3.06 COMMON AREA: CONSTRUCTION AND ALTERATION OF IMPROVEMENTS.

No Improvements, Excavation or other work which alters any Common Area from its natural or improved state on the date when such Common Area was conveyed to the Association, shall be done, except in compliance with the following provisions:

(a) No person other than Declarant, a Developer or the Association shall improve, Excavate, construct, reconstruct, refinish, alter or maintain any Excavation or Fill upon or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation form or plant any tree, shrub or vegetation upon any Common Area.

(b) The Association shall first submit the final plans and specifications for any proposed construction, reconstruction, refinishing or alteration of the exterior of any Improvement located or to be located upon any Common Area, or for any proposed Excavation or Fill or change to the natural or existing drainage or for removal of any existing trees having a height in excess of six feet or a trunk measuring six inches or more in diameter at ground level from any Common Area to the Design Committee for approval in such form and containing such information as the Design Committee may from time to time require. The Design Committee shall approve the plans and specifications upon satisfaction of the following conditions:

- (1) Any plans to construct any new Improvements, or to alter the exterior appearance of any existing Improvement upon any Common Area shall comply with the standards set forth in Section 3.03 which standards and restrictions will also apply to Common Area, and the design of such Improvements shall be in harmony with other Improvements and the overall appearance of West Loch Fairways.
- (2) The Design Committee shall review and shall either approve or disapprove such plans in writing within thirty (30) days after submission, and in the event of disapproval shall state in writing the reasons for such disapproval. The Design Committee's failure to approve or disapprove the plans within said thirty (30) days period shall be deemed approval.
- (3) The Association is not required to obtain the approval of Declarant or any Developer.

(c) The Association may, without approval of the Design Committee at any time:

- (1) Reconstruct, replace or refinish any Improvement upon a Common Area in accordance with plans previously approved by the Design Committee, or if such Improvement existed upon the Common Area when such Common Area was conveyed to the Association, then in accordance with the original design and the original or a higher standard of construction of such Improvement.
- (2) Construct, reconstruct, replace or refinish any Improvement upon any portion of the Common Area.

- (3) Replace any destroyed trees or any other vegetation in a Common Area or plant trees, shrubs and ground cover, and install appropriate irrigation systems.
- (4) Place and maintain upon any Common Area such signs as the Association may deem necessary for the identification of West Loch Fairways and of Service Roads, for the regulation of traffic, parking and use of the Common Area and for the health, safety and general welfare of Owners and the public, provided that the design of any such signs first shall be approved by the Design Committee.

(d) Any Owner may, with the prior written approval of the Design Committee and having previously obtained an easement from the Association install and maintain a subsurface utility system within a Common Area.

## **ARTICLE IV**

### **DESIGN COMMITTEE**

#### **Section 4.01 DESIGN COMMITTEE: ORGANIZATION & POWERS.**

(a) The Association shall appoint and maintain a Design Committee to review and control the design and development of the Property, to adopt the Design Committee Rules, and to maintain the Design Standards for West Loch Fairways.

(b) The Design Committee shall consist of three members (the "Members"), initially appointed by Declarant, at least one of whom shall be an Architect (the "Architect Member"). The other Members shall initially not be required to meet any qualification for membership on the Design Committee. Any Member other than the Architect Member or the initial Members shall also be an Owner.

(c) The Association shall also designate two alternate Architect Members ("Alternate Architect Members") to the Design Committee, who do not need to be Owners, to act in the absence or disability of the Architect Member.

(d) The following persons are hereby designated as the initial members of the Design Committee:

- (1) Architect Member, or his alternate
- (2) Managing Director, City and County of Honolulu, or his Representative, Member
- (3) Director, Department of Housing and Community Development, or his Representative, Member

The initial Members shall hold office for a period of three (3) years commencing one month after the first Owner takes title to a Lot from the Developer. Declarant shall appoint any and all successors during the initial three year term.

(e) The Association shall have the right from time to time to appoint and remove all Members and Alternate Architect Members of the Design Committee as follows:

- (1) At any meeting of the Board, the Board may by majority vote appoint replacements for the Members of the Design Committee; provided that the Board may replace the initial Members (other than the Architect Member) with Members who are Owners only after the initial term.
- (2) The replacements for initial Members, and all successors thereafter, shall be appointed to serve as Members or Architect Members of the Design Committee for a period of two (2) years; provided, however, that if the Board appoints two Members simultaneously, one Member shall be appointed for an initial term of two (2) years and one Member shall be appointed for an initial term of one (1) year in order that Members serve staggered terms.

(f) Any Member of the Design Committee may at any time resign from the Design Committee upon written notice delivered to the Declarant or to the Association, whichever then has the right to appoint and remove Members.

Section 4.02 DESIGN COMMITTEE MEETINGS. ACTION. COMPENSATION. EXPENSES.

The Design Committee shall meet from time to time as necessary to perform its duties. The vote or written consent of any two Members shall constitute the act of the Design Committee, unless the unanimous action of its Members is otherwise required by this Declaration. The Design Committee shall keep and maintain a record of all actions from time to time. The Architect Member and the Alternate Architect Members shall receive a reasonable fee for professional services rendered. The Design Committee may charge the Owner a reasonable fee for reviewing applications pursuant to the Design Committee Rules, except that no fees shall be charged to the Association. Unless otherwise authorized by the Association, the other Members of the Design Committee shall not receive any compensation for services rendered. All Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Design Committee function.

Section 4.03 DESIGN COMMITTEE RULES.

The Design Committee may from time to time adopt, amend and repeal by unanimous vote, rules and regulations comprising the "Design Committee Rules" to interpret or implement the provisions of the Design Standards and Article III pertaining to the design of Improvements to be approved by the Design Committee. The Association shall keep a current copy of the Design Committee Rules, as amended, available at all times at the office of the Association for inspection by any Owner or Owner's Architect. The Design Committee Rules and the Design Standards shall establish the standards for the construction of any residential building to be constructed or developed in West Loch Fairways.

Section 4.04 ESTOPPEL CERTIFICATE.

Any Owner may, upon payment to the Association of a reasonable fee to be determined from time to time by the Association, request that the Design Committee deliver to such Owner within thirty (30) days of the request an estoppel certificate executed by any two of its Members in form determined by the Design Committee and suitable for Recording, certifying

with respect to such Owner's Lot that, as of the date of its execution, either (a) all Improvements and other work done upon such Lot comply with this Declaration, or (b) such Improvements and work do not so comply, in which event the certificate shall (1) identify the non-complying Improvements and/or work, and (2) set forth the reason for such non-compliance. Any purchaser or mortgagee of such Owner shall be entitled to rely on the matters therein set forth in such certificate, such matters being conclusive as between the Association, the Owner and such purchaser or mortgagee.

Section 4.05 LIABILITY.

Neither the Design Committee for any Member of the Design Committee shall be liable to the Association or to any Owner or to any other person for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval of any plans, drawings and specifications, whether or not defective,
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications,
- (c) the development or manner of development of any property within West Loch Fairways, or
- (d) the execution and filing of an estoppel certificate pursuant to section 4.04, whether or not the facts therein are correct, provided, however, that such Member has, with the actual knowledge possessed by him, acted in good faith.

The Design Committee or any Member may, but is not required to, consult with the Association or any Owner or his Architect with respect to any plans, drawings or specifications or any other proposals submitted to the Design Committee.

Section 4.06 NON-EXISTENCE OF DESIGN COMMITTEE.

In the event that at any time through death, absence from the State, resignation, or for any other reason, there shall not be a Design Committee or there shall not be the Members necessary to act on a particular matter, the approval or action by the Design Committee being required hereunder for such matter and such situation lasts for a period of not less than twenty (20) days, then, and until there shall again be a Design Committee with sufficient Members, all matters requiring such approval or action may be approved or done by the President of the West Loch Fairways Association, or any vice president thereof, and his certificate that there had been no Design Committee, or that the required Members were not present, and that he was acting pursuant to the authority of this section shall be conclusive among the Owners, the Association, any purchaser, lessee, mortgagee or other encumbrance holder, and any other persons. The President or a vice president acting under this section, shall be entitled to employ an Architect (who shall be compensated pursuant to Section 4.02) to render technical advice.

## ARTICLE V

### WEST LOCH FAIRWAYS ASSOCIATION

#### Section 5.01 ORGANIZATION.

(a) The Association shall be organized as a nonprofit corporation under HRS Chapter 414D, as amended. The Association shall have the duties, obligations and powers set forth in this Declaration and in the Association Articles of Incorporation and By-Laws.<sup>25</sup>

#### Section 5.02 ASSOCIATION MEMBERSHIP.

(a) Each beneficial owner of a Lot shall be a member of the Association (hereinafter referred to as an "Association Member", the membership of such Association Member hereinafter referred to as "Association Membership").

(b) For the purposes of determining Association Membership status, an "Association Member" shall include:

- (1) the Owner of any Lot within the Property, excluding any Governmental Agency, Declarant, any Developer; and
- (2) Declarant or any Developer, so long as Declarant or such Developer is the owner of any Lot within the Property.

(c) No Association Member shall be terminated, or his Association Membership forfeited, except upon transfer of his interest in the Lot in the Property. No Association Member may withdraw, transfer or otherwise dispose of his Association Membership, except upon the conveyance, assignment or transfer (or transfer by agreement of sale) of a Lot to which Association Membership is appurtenant.

(d) There shall be two (2) classes of Association Member as follows:

- (1) Class A Association Members shall include all Owners described in subsection (b)(1) above; and
- (2) Class B Association Members shall include Declarant and all Developers described in subsection (b)(2) above; and

(e) An Association Member shall have all rights, duties, privileges and obligations of an Owner as set forth in this Declaration and in the Articles of Incorporation and the By-laws of the Association.

#### Section 5.03 VOTING RIGHTS.

Association Members shall be entitled to vote as follows:

- (a) Each Class A Association Member shall be entitled to one (1) vote for each Lot owned.
- (b) Each Class B Association Member shall be entitled to one (1) vote for each Lot owned.

(c) If an Association Member is an Owner comprised of more than one person or entity, any one person or entity shall exercise the votes attributable to such Association Member in the absence of protest by the other co-Owners. In case of protest, each co-Owner shall be entitled to vote its respective fraction of the one vote in proportion to the co-Owner's share of ownership in the Lot.

Section 5.04 DUTIES AND OBLIGATIONS OF THE ASSOCIATION.

The Association shall have the following duties and obligations subject to this Declaration, to be performed and for the maintenance and Improvement of West Loch Fairways for the benefit of the Owners:

(a) The Association shall accept, as part of West Loch Fairways, all real property annexed to the Common Area pursuant to Section 2.02 and shall accept all Owners as Association Members.

(b) The Association shall hold title to the Common Area and other real property from time to time conveyed to the Association, pursuant to Section 7.05. The Association may also acquire and accept title to any other real, personal or mixed property; provided that the Association shall not carry on any business or trade for profit. The Association may charge reasonable fees to Owners for use of the Recreational Facilities on the Common Area to defray the costs of construction, maintenance, repair or operation of Recreational Facilities, or of other facilities owned by<sup>26</sup> the Association, where permitted under the Internal Revenue Code of 1986, as amended from time to time.

(c) Subject to Section 5.04(i) the Association shall maintain the Common Area and other property owned by the Association, including without limitation drainage facilities, equipment, landscaping, and all Improvements located on the Common Area and other property in good order and repair. The Association shall have no obligation to maintain in good order and repair any Improvement constructed upon the Common Area by any Owner, but may compel such Owner to maintain such Improvement.

(d) The Association shall accept and undertake to fulfill any delegation, responsibility or liability for the upkeep, repair and maintenance in good order of any property and Improvements, including drainage facilities and equipment and landscaping, within or adjoining the Common Area, which obligation, responsibility or liability is imposed by or exists by virtue of law or which is imposed by or exists by virtue of<sup>27</sup> a private agreement entered into by Declarant or commitment made by Declarant to a Governmental Agency in the course of the development of the Common Area, whether or not the Association was or is made a party to such agreement or commitment.

(e) The Association shall accept and undertake the responsibility and obligation to upkeep, repair and maintain any area within the Common Area (whether or not such area is formally designated a Lot) for which such responsibility and obligation has been delegated to the Association by Declarant or by a Developer with the consent of Declarant, provided that, (1) the area is intended to be conveyed to the Association as a Common Area, (2) the area is fully and completely developed for its intended use, (3) the area is available for use by all Owners within the Common Area or is of general benefit to the Common Area and (4) Declarant or a Developer gives the Association thirty (30) days prior written notice that responsibility for upkeep, maintenance and repair is being transferred to the Association.

(f) The Association shall pay all real property taxes and assessments levied upon any portion of the Common Area to the extent not assessed to or paid by the Owners.

(g) The Association may contract for, employ or otherwise provide security and refuse disposal services if such services are not provided for by the City or other Governmental Agency, and if the cost for such services is assessed directly or indirectly against the Owners.

(h) The Association shall obtain, maintain and enforce the following policies of insurance.

(1) all Improvements owned by the Association and located upon any Common Area shall be insured against (i) loss or damage by fire (group I perils), (ii) the risks covered by the standard extended coverage endorsements (group II perils) and all risks (special perils), and (iii) such other hazards (including boiler and machinery comprehensive perils) or risks which a prudent businessman would insure against with an insurance company authorized to do business in Hawai'i and in time of war against war damage to the extent such governmental insurance is obtainable at reasonable cost, in an amount as near as practicable to the full replacement costs thereof without deduction for depreciation through the replacement cost endorsement, and if applicable, the inflation guard endorsement to ensure policy limits are maintained at full replacement value, by blanket policy or policies in the name of the Association, and

(2) comprehensive general liability insurance with respect to the Common Area and Improvements thereon, under policies, in an amount not less than a combined single limit for bodily injury and property damage with endorsements for general aggregate, products and completed operations liability for ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per occurrence or such higher limits as the Association may from time to time establish with due regard to prevailing prudent business practices, in Hawai'i.

(i) The Association may maintain any Service Road which is not maintained and repaired by the Lots that have driveways that abut such Service Road. The cost of such maintenance and repair shall be borne equally by such Lots as a special assessment. The Association shall repair any Service Road which has been damaged by an Owner or group of Owners if such Owner or group of Owners fail to adequately repair such damage; provided that in such event the cost for such repair shall be borne solely by such Owner or group of Owners, jointly and severally, as a special assessment.

The policy or policies of insurance referred to in subparagraph (2) above shall name as insured (i) the Association and its officers, the Board and its members, the Design Committee and its members and the employees of the Association, Board and Design Committee; and (ii) with respect to any liability arising out of the maintenance and use of the Common Area, the Owners. Such policy or policies shall protect each of the insured as if each were separately insured under separate policies, provided, however, that such policy or policies



shall not require the insured or insurers to pay any amounts in excess of the maximum limits stated therein. Each and every policy of insurance obtained by the Association, shall expressly waive any and all rights of subrogation against the Declarant and any Owner.

The Association may also obtain and maintain in force any policies of insurance covering any other risks the Board may determine to be necessary or advisable.

Section 5.05 POWERS OF ASSOCIATION.

The Association shall have all the powers set forth in the Articles of Incorporation, the By-Laws and this Declaration, and all powers conferred upon the Association by the Hawai'i Nonprofit Corporation Act, HRS Chapter 414D, as amended,<sup>28</sup> subject, however, to limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation and By-Laws and in this Declaration to do all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the purposes of the Association for the health, safety and general welfare of the Owners of West Loch Fairways. Without limiting the generality of the foregoing, the Association shall have the following express powers:

(a) The Association shall have all the powers set forth in this Declaration including without limitation, the power to levy assessments on Association Members pursuant to Article VI, to defray the cost of satisfying the duties and obligations and take any such action, whether or not expressly authorized by this Declaration, the Rules or the Design Committee Rules;

(b) In fulfilling any of its obligations and duties under this Declaration, including without limitation, its obligations or duties for the maintenance, repair, operation or administration of the Common Area, or in exercising any of its rights to construct Improvements or other work upon any Common Area the Association shall have the following power:

- (1) to contract and pay for and provide for the construction of Improvements or other work upon the Common Area, and to contract and pay for and provide for the maintenance, restoration and repair of all Improvements of whatever kind located on any Common Area, and to contract and pay for and provide for such other services as may be necessary or otherwise in carrying out its functions as set forth in this Declaration on such terms and conditions as the Association shall deem appropriate, and to pay and discharge all liens arising out of any work;
- (2) to obtain, maintain and pay for such insurance policies or bonds as the Association may deem appropriate for the protection or benefit of West Loch Fairways, the Association, the members of the Board, the Members of the Design Committee, or the Owners;
- (3) to contract and pay for or provide for such utility services including, without limitation, water, sewer, garbage disposal, refuse collection, recycling, electrical, telephone community antenna television and gas service provided such services are made available to all Owners on a commercially reasonable basis;

- (4) to contract and pay for or provide for the services of Architects, engineers, attorneys and certified public accountants or such other services as the Association may deem necessary;
- (5) to contract and pay for or provide for, fire, police and such other public safety and security services as the Association may deem necessary for the benefit of West Loch Fairways and the Owners; and
- (6) to contract and pay for or provide for such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary, and to pay and discharge any and all liens from time to time placed or imposed upon any Common Area on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration.

(c) The Association shall have the power and authority from time to time to convey to any Governmental Agency, public utility, private utility or third party for reasonable compensation or on such other terms as the Board may approve such easements, rights-of-way, parcels or strips of land in, on, over or under any Common Area, for the purpose of:

- (1) constructing, directing, operating and maintaining public streets, walks, driveways, parkways and park areas;
- (2) installing, operating and maintaining poles, wires, conduits, transformers, switching terminals and other equipment for the transmission of electricity for lighting, heating, power, telephone, television and other purposes, and necessary facilities in connection therewith; and
- (3) constructing, operating and maintaining public and private sewers, storm water drains, land drains and water systems, sprinkler systems, water, heating and gas lines or pipes and necessary facilities in connection with the foregoing.

(d) The Association may from time to time employ the services of a manager (the "Manager") to manage the affairs of the Association, and to the extent not inconsistent with the laws of the State of Hawai'i Nonprofit Corporation Act, the Association may delegate to the Manager any of its powers under this Declaration, provided, however, that the Manager may execute any contract on behalf of the Association for a sum not<sup>29</sup> to exceed \$10,000 or for the performance of any work or services, which work or services will be completed within sixty (60) days, and shall not have the power to sell, convey, mortgage or encumber any real or personal property of the Association other than unserviceable maintenance or recreation equipment.

(e) The Association may from time to time pay, compromise or contest any or all taxes and assessments levied against all or any part of the Common Area, or upon any personal property belonging to the Association, provided, however, that prior to the sale or disposition of any property to satisfy the payment of any such tax assessments, the Association shall pay and discharge the lien imposed with respect to such property.

(f) The Association may (1) exchange, sell, convey, or otherwise dispose of, for cash or on such terms as the Association shall approve, any portion or portions of the Common Area, with Improvements thereon, or other property of the Association, the retention of which property the Association has determined is no longer necessary, advantageous or beneficial to the Association or to the Owners, or (2) borrow money, without limit as to the amount, for any purpose and secure the same by a mortgage of the Common Area then owned by the Association or any other property of the Association, provided, however, that no such exchange, sale or other disposition of any real property in fee and no such borrowing or mortgaging shall be made unless the same shall have been approved by an affirmative vote of not less than two-thirds (2/3rds) interest of all Association Members, other than the City and any and all Developers, who may vote in person or by proxy at a meeting of the Association duly called for such purpose, the notice for which meeting shall have described the real property to be sold and the terms of sale or the amount of the borrowing and the property to be mortgaged and shall have given the reasons therefor. For example, if the interest of all the City and all Developer/Members is 60 percent, then, in order to sell, borrow or mortgage any of the Common Area, two-thirds of the non-City/Developer-owned 40 percent interest must vote in favor of such action. All proceeds of any disposition of any sale or borrowing, less the expenses thereof, shall be invested by the Association and additional property acquired for the benefit of the Association and the Owners or in improving the properties of the Association.<sup>30</sup>

Section 5.06 RULES.

(a) The Board may from time to time adopt, amend and repeal rules and regulations to be known as the Rules to govern the following:

- (1) the use of Common Area by any Owner or by the Family, invitee, licensees, or lessees of such Owner;
- (2) the use of Service Roads;
- (3) the collection and disposal of refuse;
- (4) the burning of open fires;
- (5) the maintenance of animals within West Loch Fairways; and
- (6) the amount of the Initiation Assessment to be paid by each new Association Member.

(b) With respect to subparagraph (a)(1) above, the West Loch Fairways Rules may without limitation and to the extent deemed necessary by the Association in order to preserve the benefits of West Loch Fairways for all Owners, their families, invitees, licensees, lessees, and guests, restrict and/or govern the use of Common Area by any Owner or by the Family, invitee, licensees, or lessees or guests of such Owner.

(c) With respect to subsection (a)(2) above, the Rules may provide for:

- (1) parking restrictions;
- (2) maximum speeds for vehicular traffic on Service Roads;

- (3) the time or times when commercial vehicles may be permitted to use Service Roads owned by the Association; and
- (4) the types of vehicles other than passenger automobiles which may be permitted to use the Service Roads owned by the Association.

(d) The Association shall maintain a copy of the Rules as adopted, amended or repealed, from time to time, certified by the secretary of the Association, and deliver a duplicate copy to each Owner on his acquisition of a Lot, and shall deliver a copy of each new rule or amendment of an existing rule and notice of repeal of any rule to each Owner. The Rules shall be incorporated in and shall have the same force and effect as if they were part of this Declaration. Failure of any Owner to receive a copy of any rule, amendment of a rule, or notice of repeal of a rule shall not render such rule, amendment or repeal invalid.

**Section 5.07 LIABILITY OF MEMBERS OF THE BOARD.**

No member of the Board shall be personally liable to any Owner, guest, invitee or any other person, including the Declarant, for any error or omission of the Association, its employees, the Design Committee or the Manager of the Association, so long as such member has acted in good faith.

**Section 5.08 EXCLUSIVE POWERS OF THE ASSOCIATION.**

The Association, through the Board shall have the exclusive authority to exercise the powers and authorities referred to in paragraphs (b) through (f) inclusive of Section 5.05.

**ARTICLE VI**

**FUNDS AND ASSESSMENTS**

**Section 6.01 OPERATING FUND.**

The Association shall maintain an Operating Fund into which the Association shall deposit all monies received by the Association, whether from Initiation Assessments, Maintenance Assessments, Special Assessments, income attributable to the Operating Fund or any other rents, charges or fees levied by the Association. The Operating Fund shall comprise the working capital of the Association from which the Association shall make all disbursements and discharge all liabilities in the exercise and performance of its duties and obligations under this Declaration and the Articles of Incorporation and By-laws of the Association.

**Section 6.02 INITIATION ASSESSMENT.**

The Association shall charge to each Owner, except Declarant and Developer, and such Owner shall pay an Initiation Assessment upon such Owners taking title to a Lot from a Developer thereby becoming an Association Member. The Initiation Assessment shall be in addition to any other Assessments provided for in this Article VI. The initial Initiation Assessments shall be ONE HUNDRED AND NO/100 DOLLARS (\$100). The Initiation Assessment may be increased or decreased pursuant to the Rules.

Section 6.03 MAINTENANCE ASSESSMENT.

(a) The initial Maintenance Assessment for each Association Member of each class shall be THIRTY AND NO/100 DOLLARS (\$30.00) per month commencing one month after Owner takes title to a Lot from a Developer.

(b) No later than thirty (30) days prior to the commencement of each Fiscal Year beginning with the first Fiscal Year in which the first annual meeting of the Association shall be held, the Board shall estimate the costs and expenses to be incurred by the Association during such Fiscal Year in performing its duties and obligations including, but not without limitation, the cost of utilities for the Common Area, janitorial services, trash disposal, repairs and maintenance, security management, the cost of management contracts, supplies, wages and salaries of employees used in maintenance and general operations, payroll taxes (and similar governmental charges) with respect thereto, depreciation or rental of equipment used in operation and maintenance, accounting and bookkeeping expenses, the legal fees and expenses and financing expenses relating to operation and management and insurance premiums. In addition the Board shall make a reasonable provision for contingencies, reconstruction and replacements to existing Common Area and facilities, and for all fees and expenses of the Design Committee and its operations. The Board shall subtract from the above imposed expenditures the following sources of income:

- (1) an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) in the Operating Fund at the start of a Fiscal Year;
- (2) the estimated receipts for all user fees to be collected from users of Recreational or other facilities during such Fiscal Year.

The sum thus derived shall constitute the basis for determining the Maintenance Assessment for each Fiscal Year.

(c) In each Fiscal Year, the Board shall determine the per unit Maintenance Assessment by dividing the sum determined pursuant to subsection 6.03(b) by the sum of the following:

- (1) the total number of Lots owned by Class A Association Members, plus
- (2) the total number of Lots owned by Class B Association Members, but excluding the number of Lots exempt from assessment pursuant to subsection 6.03(d).

(d) The following real property shall not be subject to assessment:

- (1) the Common Area; and
- (2) Lots which a Developer owns but has not sold as set forth in Section 6.05, below.<sup>31</sup>

(e) In each Fiscal Year, the Board shall, by a majority vote at a meeting duly called for such purpose, determine the individual Maintenance Assessment to be paid by Each Association Member by multiplying the per unit Maintenance Assessment by:

- (1) the number of Lots owned, in the case of each Class A Association Member, and
- (2) the number of non-exempt Lots owned in the case of each Class B Association Member.

The Board shall prepare and send to all Association Members the budget determined and Maintenance Assessment so determined.

(f) In the event the Board does not determine the Maintenance Assessment by the commencement of a Fiscal Year, the Owners shall continue to pay a Maintenance Assessment in the amount determined for the preceding Fiscal Year.

(g) If at any time during any Fiscal Year, the estimated Maintenance Assessment proves inadequate for any reason including nonpayment of any Owner's share thereof, the Board may upon notice to all non-exempt Association Members, levy a special Maintenance Assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owners in the manner set forth in subsection (e) above.

(h) Subject to Section 6.05, Owners shall pay the Maintenance Assessment to the Association in equal quarterly installments on or before the first day of each January, April, July and October, or in such other installments as the Board may designate.

(i) The Board must notify members in writing of any increase in regular assessments at least thirty days prior to the increase.<sup>32</sup>

#### Section 6.04 INDIVIDUAL SPECIAL ASSESSMENTS.

The Board shall levy a special assessment against any Owner whose acts or failure to comply with this Declaration, the Rules, or the Design Committee Rules or decisions resulted in the Association expending monies from the Operating Fund to enforce this Declaration, the Rules or the Design Committee Rules or decisions. Such Assessments shall be in the amount so expended and shall be due and payable to the Association when levied. Monies so expended shall include, without limitation, interest, all costs of enforcement, and engineers', Architects', attorneys' and accountants fees incurred by the Association.

#### Section 6.05 ASSOCIATION, DECLARANT AND OTHER EXEMPTIONS.

Owners of the following Lots shall be exempt from assessments under this Article VI as follows:

- (a) the Association shall be wholly exempt;
- (b) Declarant shall be wholly exempt;
- (c) a Developer shall be exempt from the Initial Assessment and the Maintenance Assessment as to any Lot it owns for a period of eighteen (18) months after the City shall have conveyed such Lot to the Developer so long as such Lot shall be offered for sale but the sale of such Lot shall not have closed within said eighteen (18) month period; provided, however, that if the Developer, for its own reason, holds a Lot from sale, such Developer shall pay the Initial Assessment and subsequent Maintenance Assessments commencing sixty (60) days after the Developer decides to withhold such Lot from sale, and provided further that upon completion of the Residence by the Developer on the last Lot in West Loch Fairways, the

Developer shall have a period of twelve months thereafter during which time the Developer shall not be required to pay the Initial Assessment and subsequent Maintenance Assessments. The Developer shall notify the City or the Association, as appropriate, of its decision to withhold a Lot from sale within five (5) business days of such decision.

**Section 6.06 DEFAULT IN PAYMENT OF ASSESSMENTS.**

(a) Each assessment under this Article VI shall be a separate distinct and personal debt and obligation of the Owner when the Assessment is made, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay such assessment to the Association. If the Owner does not pay any installment of such assessment when due, the Owner shall be deemed in default and the amount of the unpaid assessment together with the amount of any subsequent unpaid assessments, plus interest at twelve per cent (12%) per annum plus costs, including reasonable attorney's fees, shall be and become a lien upon the Lot or Lots of such Owner upon recordation by the Association of a notice of default. Such lien shall be subordinate to the lien of any mortgage upon the Lot and the sale or transfer of any Lot in foreclosure of any such mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such mortgage, or the transfer or conveyance to the mortgagee in lieu of foreclosure, shall extinguish the lien as to payments of assessments which became due prior to such sale, transfer, but no such sale or transfer shall relieve such Lot or the purchaser or transferee from the obligation to pay prospective assessments. The Association may record such notice of default within ninety (90) days following occurrence of such default and shall commence proceedings to enforce such lien within six (6) months following such recordation. The Association may foreclose such lien by suit in like manner as a mortgage of real property, and the Association shall have power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage or convey the same. The Association may also maintain a suit to recover a money judgment for unpaid assessments without foreclosing or waiving the lien on the Lot. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

(b) Upon the request of an Owner, the Association shall execute a certificate stating the amount of the unpaid assessments secured by the lien upon any Lot or Lots. Such a certificate shall be conclusive upon the Association and the Owners as to the amount of such unpaid assessment as of the date of the certificate. The Association may charge a reasonable fee for furnishing such certificate.

**ARTICLE VII**

**MISCELLANEOUS PROVISIONS**

**Section 7.01 AMENDMENT OR REPEAL.**

(a) Subject to subsections (b) and (c) below, this Declaration may be amended or repealed by affirmative vote or written consent of not less than 2/3rds of the Association Members.

(b) Notwithstanding the above, so long as the City or any Developer is in control of the Association, or any class of membership, the prior approval of the U.S. Department of Housing and Urban Development (FHA) or the Veterans Administration shall be

required prior to the annexation of additional properties, mergers or consolidations, mortgaging of any Common Area, the dedication to the Association of any real property not included in the Common Area to be included as a Common Area, and any amendment to or dissolution of Articles, By-Laws or the Declaration.

(c) The provisions of subsections 7.01(a) and (b), above, to the contrary notwithstanding, no provision of this Declaration may be amended or repealed, the effect of which amendment or repeal will limit, abridge, modify or terminate any rights, easements, privileges or immunities of Declarant, any Developer, or any authority or power reserved to Declarant or any Developer unless Declarant and all affected Developers consent in writing to such amendment or repeal prior to the consideration of such amendment or repeal.<sup>33</sup>

#### Section 7.02 ENFORCEMENT, NON-WAIVER.

(a) The Association or any Owner shall have the right to enforce any and all of the covenants, conditions, restrictions, obligations, liens and charges now or hereafter imposed by this Declaration upon other Owners, occupants, tenants, employees of an Owner, or any other person who in any manner may use the property, or upon any property within the Common Area, and the costs of enforcement, including court costs and attorney's fees, shall be paid by any Owner, occupant, tenant, employee of an Owner, or any other person who in any manner may use the property, who violated any such restriction, covenant or condition, or failed to pay and satisfy when due any such lien or charge; provided that if the association is not the prevailing party, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to the person by the association. The reasonableness of any attorney's fees paid by a person or by an association as a result of an action to foreclose a lien on any unit shall be determined by the court.<sup>34</sup>

(b) Any Owner may enforce any covenants, conditions, and restrictions imposed by this Declaration upon the Association, provided, however, no Owner shall have any right to enter upon the Lot of any other Owner or to abate any nuisance or enforce any provision hereof against another Owner or the Association.

(c) The Association or any Owner shall have the right to enjoin or abate every act or omission constituting a violation of any restriction, condition or covenant of the Declaration which violation is hereby declared to constitute a nuisance pursuant to subsections (a) and (b) above.

(d) Each remedy provided for in this Declaration is cumulative and non-exclusive.

(e) The failure in any case to enforce the provisions of any restriction, covenant, condition, obligation, lien or charge of this Declaration shall not constitute a waiver of any right to enforce any such provision or any other provisions of this Declaration in any other case with respect to any Owner or Lot.

(f) If any member is the prevailing party in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the member shall be awarded to the member; provided that no such award shall be made in any derivative action unless:



- (1) The member first shall have demanded and allowed reasonable time for the board of directors to pursue an enforcement action; or
- (2) The member demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

If a member is not the prevailing party in any court action against an association, any of its officers or directors, or its board of directors, to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the association shall be awarded to the association, unless the action was filed in small claims court, or, prior to filing the action in a higher court, the owner has first submitted the claim to mediation pursuant to section 421J-13, and made a good faith effort to resolve the dispute under any of those procedures.<sup>35</sup>

(g) Nothing in this section shall be construed to prohibit the board of directors from authorizing the use of a collection agency.<sup>36</sup>

Section 7.03 CONSTRUCTION, COMPLIANCE WITH LAWS, SEVERABILITY, SINGULAR AND PLURAL, TITLES.

(a) All of this Declaration, covenants and conditions of this Declaration shall be liberally construed together to promote and effectuate the purposes of West Loch Fairways as set forth in the introductory paragraphs of the Declaration.

(b) No provision of this Declaration shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or over West Loch Fairways. If all uses to which a Lot may be devoted under the provisions of this Declaration are illegal under the applicable zoning ordinances or statutes, an Owner may use his Lot for any purpose which is lawful under such ordinance or statute, subject, however, to all other provisions of this Declaration which can lawfully apply to the Lot.

(c) If any provision of this Declaration is held to be invalid or unenforceable, the validity or enforceability of the other provisions will remain unaffected.

(d) The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter as the context requires.

(e) The titles of sections and paragraphs herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Declaration.

Section 7.04 SUBDIVISION AND CONSOLIDATION.

(a) No Lot within the Common Area shall be subdivided or consolidated and re-subdivided by any Owner other than Declarant or Developer, without the prior written approval of the Design Committee. The Design Committee shall review the proposed subdivision or consolidation and re-subdivision for compliance with this Declaration. The Design Committee shall approve or disapprove the same within thirty (30) days after submission, and in the event of disapproval shall state in writing the reasons. Failure to approve or disapprove within thirty (30) days shall be deemed approval. The Design Committee

may charge a reasonable fee for review as determined by the Design Committee. The Design Committee shall certify its approval on a copy of the subdivision map.

Section 7.05 CONVEYANCE OF COMMON AREA; RESERVATION OF EASEMENTS AND RIGHTS-OF-WAY AND CLASSIFICATION OF LAND AREA.

(a) The Association shall accept all of the real property and interests in real property conveyed as Common Area by the Declarant or by a Developer, provided that the Association shall accept title to real property in fee subject to the following exceptions, liens and encumbrances:

- (1) the lien of any non-delinquent real property taxes and assessments;
- (2) easements and rights-of-way on, over or under all or any part of such real property as may be reserved to the Declarant or a Developer with Declarant's consent or granted to any Owner in accordance with this Declaration;
- (3) easements and rights-of-way on, over or under all or any part of such real property as may be reserved to the Declarant or to a Developer for access to real property contiguous to the Common Area, or to be granted to or for the benefit of a Governmental Agency, the State of Hawai'i, the City, or any public utility, or to any Lot for the purpose of constructing, erecting, operating and maintaining Service Roads, poles, wires, pipelines or ditches for electricity for lighting, heating, power, telephone, television and other purposes, and for necessary facilities in connection therewith, and public and private sewers, sewage disposal systems, storm water drains, land drains, pipes, water systems, water sprinkler systems, water, heating and gas lines or pipes, and any other utility systems;
- (4) easements for Service Roads, pipelines, ditches, telephone, gas and electric lines and other utilities in favor of public utilities, any Governmental Agencies or private corporations, or individuals; and
- (5) any other Lien, encumbrance or defect in title (other than a lien to secure an obligation to pay money) which would not materially prejudice the Owners in their use and enjoyment of such real property.

(b) The land classification of any property within West Loch Fairways which is not a Common Area may be changed to a Common Area by the transfer of such property to the Association from all persons having any right, title or interest therein and the acceptance by the Association of such property. Notwithstanding anything else herein, the Declarant may change the land classification of any property not previously designated as Common Area as to which it is the Owner and may convey such property to the Association pursuant to the provisions of Section 7.05(a) hereinabove, and the Association shall accept the same and such property shall thereupon become Common Area for all purposes hereunder.

(c) At any time and from time to time following conveyance of Common Area by the Declarant to the Association pursuant to this section, the Declarant may construct, reconstruct, refinish or alter any Improvement upon or make or create any Excavation on or fill upon or change the natural or existing drainage of or remove or plant any trees, shrubs or ground cover upon such Common Area if the Declarant shall determine that any such work (1) is reasonably necessary for any utility installation serving any property within West Loch Fairways, (2) is reasonably necessary for the construction of any facility for use by the Owners, (3) is desirable in order to provide access to or to enhance the use and enjoyment of the Common Area, or (4) is desirable to preserve any property which constitutes a part of West Loch Fairways.

Section 7.06 ASSIGNMENT OF POWERS.

Declarant may delegate, transfer, assign, or release to the Association or a Developer all rights and powers vested in Declarant pursuant to this Declaration and the Association or such Developer shall accept the same upon the recording by the Declarant of a notice of such delegation, transfer, assignment, or release.

Section 7.07 CONDEMNATION OF COMMON AREA.

If any portion of the Common Area or any interest therein shall be taken by the right of eminent domain or by purchase in lieu of eminent domain, the entire award and compensation shall be paid to the Association. No Owner shall be entitled to any portion of such award and no Owner shall be entitled to participate as a party or otherwise in any proceedings relating to such condemnation.

Section 7.08 OBLIGATIONS OF OWNERS, AVOIDANCE, TERMINATION.

No Owner through his non-use of any Common Area, including any Recreational Facility, or by abandonment of his Lot, may avoid the burdens or obligations imposed on him by this Declaration.

Section 7.09 NOTICES, DOCUMENTS, DELIVERY.

Whenever a notice is required, reasonable notice shall be deemed to be five days. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and sent by first class, registered or certified mail, prepaid postage, or by hand delivery, or by facsimile telecopier with a copy sent to first class mail addressed as follows:

To Declarant at: Department of Housing and Community Development  
Fifth Floor  
650 South King Street  
Honolulu, Hawai'i 96813

*[Note: the DHCD was eliminated by an Executive Branch Reorganization Plan proposed by the Mayor and approved by Resolution 98117, CD1, on May 27, 1998; possible successors are the DPP or the Housing and Community Development Corporation of Hawai'i, HCFCH]*

or: Westloch, Inc. *[Note: dissolved in 1996]*  
Suite 1550  
1001 Bishop Street

Honolulu, Hawai'i 96813

To an officer of the Association or Design Committee at:

Department of Housing and Community Development  
Fifth Floor  
650 South King Street  
Honolulu, Hawai'i 96813

*[Note: the DHCD was eliminated by an Executive Branch Reorganization Plan proposed by the Mayor and approved by Resolution 98117, CD1, on May 27, 1998; possible successors are the DPP or the Housing and Community Development Corporation of Hawai'i, HCFCH]*

To An Owner: The Street Address of such Owner in West Loch Fairways

Any such address may be changed from time to time by serving notice to all other parties as above provided. Service of such notice or demand shall be deemed complete on the date of actual delivery or at the expiration of the second day after the date of mailing, whichever is earlier.

Section 7.10 DECLARATION CONTROLS.

In the event of any inconsistency among the provisions contained in this Declaration, the Articles or the By-Laws, the provisions contained in the Declaration shall be paramount and control.<sup>37</sup>

Section 7.11 MEDIATION / ARBITRATION.

(a) At the request of any party, in the event that any dispute or disagreement arises between an Owner or group of Owners or the Association, its board of directors, managing agent, manager, or one or more other members relating to the interpretation, application, or enforcement of the Declaration or other Association documents, or Chapter 421J of the Hawai'i Revised Statutes, as amended, it shall first be submitted to the Mediation Center of the Pacific for mediation. If it cannot be settled by mediation, then it shall be submitted to the American Arbitration Association for binding arbitration before one arbitrator whose decision shall be final, binding and enforceable, pursuant to Chapter 658A, H.R.S.<sup>38</sup>

(b) Nothing in Subsection 7.11(a) shall be interpreted to mandate the mediation of any dispute involving:

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of Owners or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against the Association, the Board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the Association or its Board would be

unavailable for defense or judgment because mediation was pursued.<sup>39</sup>

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the Association and the Owner.<sup>40</sup>

Section 7.12. DOCUMENTS OF THE ASSOCIATION.

The Association shall be required to make documents available to Owners in accordance with Section 421J-7, Hawai'i Revised Statutes, as amended.<sup>41</sup>

Each of the undersigned officers of the Association warrants and represents that he or she is legally authorized to sign this First Restatement of the Declaration on behalf of the Association. The officers of the Association agree that this First Restatement of the Declaration may be executed in counterparts, each of which shall be deemed an original, and those counterparts shall together constitute one and the same instrument, binding all the Parties, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

*(The remainder of this page is intentionally left blank. Signature page follows.)*

NOT FOR USE IN RESALE OR REFINANCING

IN WITNESS WHEREOF, the undersigned have executed this instrument on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

WEST LOCH FAIRWAYS ASSOCIATION

By: \_\_\_\_\_  
(Print name: \_\_\_\_\_)  
Its:

By: \_\_\_\_\_  
(Print name: \_\_\_\_\_)  
Its:

NOT FOR USE IN RESALE OR REFINANCING

STATE OF HAWAI'I )  
 ) ss.  
CITY & COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, in the First Circuit of the State of Hawai'i, before me personally appeared \_\_\_\_\_, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the \_\_\_\_\_ of the West Loch Fairways Association, a Hawai'i Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "First Restatement of the Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated \_\_\_\_\_ and contained 133 pages at the time of this acknowledgment/certification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawai'i  
My Commission Expires: \_\_\_\_\_

NOT FOR USE IN RESALE OR REFINANCING

STATE OF HAWAI'I )  
 ) ss.  
CITY & COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, in the First Circuit of the State of Hawai'i, before me personally appeared \_\_\_\_\_, personally known to me or proven to me on the basis of satisfactory evidence, who being duly sworn or affirmed, did say that such person was the \_\_\_\_\_ of the West Loch Fairways Association, a Hawai'i Nonprofit Corporation, that said person executed the foregoing instrument identified or described as "First Restatement of the Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" as such person's free act and deed on having been duly authorized to execute such instrument in such capacity.

The foregoing instrument is dated \_\_\_\_\_ and contained 133 pages at the time of this acknowledgment/certification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawai'i  
My Commission Expires: \_\_\_\_\_

NOT FOR USE IN RESALE OR REFINANCING



## ENDNOTES

The following endnotes correspond to provisions in the Declaration which have been restated to conform to Chapter 421J, Hawai'i Revised Statutes, as amended, the Federal Fair Housing Act, as amended (Title 42, Chapter 45 of the United States Code) and its State counterpart, Chapter 515 of the Hawai'i Revised Statutes, as amended, and to integrate all amendments made to the Declaration. This First Restatement of the Declaration correctly sets forth without change the corresponding provisions of the original Declaration, as amended, and supersedes the original Declaration and all prior amendments thereto and restatement thereof. This First Restatement was made solely for the purpose of information and convenience. In the event of a conflict, the First Restatement shall be subordinate to the cited statute.

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<sup>1</sup> Article I's definition of "Articles of Incorporation" was amended to state that the Articles of Incorporation were filed on October 23, 1991.

<sup>2</sup> Article I's definition of "Association" was amended by the "Second Amendment to Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" dated January 30, 1992 (the "January 1992 Amendment"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 1888371 and also recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 92-020282.

<sup>3</sup> Article I's definition of "By-Laws" was amended to state that the By-Laws have been adopted.

<sup>4</sup> Article I's definition of "Design Standards" was amended to reference Exhibits J through P, which were added by the "Amendment to Design Standards of the West Loch Fairways Subdivision" dated January 14, 1994, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. 2152684 and also recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 94-095075, and by the "Amendment to Design Standards of the West Loch Fairways Subdivision" dated August 27, 1997, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. 2425840 and also recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 97-174222. Exhibit P was approved by the written consent of a majority of the owners in 2011. Note that the "Declarant" no longer exists and that the Design Standards can now be amended by a majority of the Association members.

<sup>5</sup> Article I's definition of "Duplex Lots" was amended to add Duplex Lot Numbers 6970/6971 through 7096/7097 by the "First Amendment to Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" dated February 10, 1992 (the "February 1992 Amendment"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 1888370 and also recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 92-020281; it was further amended to delete Duplex Lot Numbers 6970/6971 through 7082/7083 by the "First Supplement to Declaration of Covenants, Conditions and Restrictions of West Loch Fairways" dated October 30, 1995 (the "1995 Amendment"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2288663 and also recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. 96-016037.

<sup>6</sup> Article I's definition of "Duplex Lots" was amended to add Duplex Lots Numbers 6721/6722 through 6965/6966 by the 1995 Amendment.

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<sup>7</sup> The last paragraph of Article I's definition of "Duplex Lots" was amended by the February 1992 Amendment and by the 1995 Amendment. As indicated in that paragraph, the Developer reserved the right to change the types of duplex buildings to be built on a particular lot, as well as the designation of the type of unit as an "A", "B", etc., unit. This broad authority seems to have resulted in the definition of "duplex building" in article I of the Declaration listing certain types of units that were never built. For example, Exhibits A, B, C, and D to the Declaration show plans for some of the duplex models listed in Article I's definition of "duplex building". In contrast, Exhibits A, B, C, and D to the Declaration do not show plans for other duplex models listed in Article I's definition of "duplex building", such as Tahoe and Sierra, Long Island and Olympic, Cypress and Oakland, and Harbor Tower and Spanish Bay duplex units. Although those units are listed in the body of the Declaration, plans for those duplex units were, apparently, never attached to the Declaration as exhibits.

In addition, plans for the single-family homes built at the project were not attached to the Declaration. The members of the association formally approved the addition of the Hello Honokaa, Hello Honolulu, Hello Lahaina, Hello Lihue, and Hello Hilo models as exhibits to the restated Declaration. In addition, the sales materials for the project show plans for single-family homes with the names Hello Boston, Hello Atlanta, Hello Monterey, Hello Dallas, Hello Chicago, Hello Seattle, Hello Denver, Hello Tucson, as well as the Milo, Ohia, and Lehua models. All of the floor plans for those single family units are attached as Exhibit Q to this Declaration, for reference.

<sup>8</sup> Article I's definition of "Duplex Lots" was amended by the February 1992 Amendment and by the 1995 Amendment.

<sup>9</sup> Article I's definition of "family" was amended to specifically exclude children from the occupancy limitations on each lot to comply with the Federal Fair Housing Act and its State counterpart, Chapter 515, HRS, as amended, which prohibits occupancy restrictions that may affect children.

<sup>10</sup> Article I's definition of "Greenbelt Lot" was amended by the February 1992 Amendment and by the 1995 Amendment. Note that while the Design Standards use the term "Greenway" not "Greenbelt", the two terms are intended to be identical.

<sup>11</sup> Article I's definition of "Lot" was amended by the February 1992 Amendment and by the 1995 Amendment.

<sup>12</sup> Article I's definition of "Owner" was amended by the January 1992 Amendment.

<sup>13</sup> Article I's definition of "Residence" was amended by the January 1992 Amendment.

<sup>14</sup> Article I's definition of "Service Road" was amended by the February 1992 Amendment and by the 1995 Amendment.

<sup>15</sup> Article I's definition of "Streets" was amended by the February 1992 Amendment and by the 1995 Amendment.

<sup>16</sup> Article III, Subsection 3.02(a) was amended to include a reference to subsection 3.02(ii), which allows families with children to seek reasonable exemptions to the Association's rules.

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<sup>17</sup> Article III, Subsection 3.02(h) was amended to reference Subsection 3.02(ii), which outlines the rights provided to disabled occupants to have pets, and to add that occupants other than owners may keep animals at the project to avoid discrimination against tenants.

<sup>18</sup> Article III, Subsection 3.02(n) was modified by the written consent of the owners in 2011 to adopt rules on City trash receptacles.

<sup>19</sup> Article III, Subsection 3.02(r) was amended to replace “Owners” with “Owner’s” to correct a typographical error.

<sup>20</sup> Article III, Subsection 3.02(z) was amended to reference the Telecommunications Act of 1996 and the rules adopted by the Federal Communications Commission implementing Section 207 of that Act, which greatly restrict an association’s authority to limit an owner or resident from installing antennas and small satellite dishes designed to receive video programming.

<sup>21</sup> Article III, Subsection 3.02(ii) was added to outline the rights provided to families with children and disabled occupants and guests of the project by the Federal Fair Housing Act and its State counterpart, Chapter 515, HRS, as amended.

<sup>22</sup> Article III, Section 3.04(e) was amended to replace Chapter 658, HRS, which was repealed in 2001, with its current equivalent, Chapter 658A. The Neighborhood Justice Center is now known as the Mediation Center of the Pacific.

<sup>23</sup> Article III, Section 3.05(b) was amended by the January 1992 Amendment and was further amended to replace Chapter 658, HRS, which was repealed in 2001, with Chapter 658A, its current equivalent. The Neighborhood Justice Center is now known as the Mediation Center of the Pacific.

<sup>24</sup> Article III, Subsection 3.05(d)(3) was amended to reference Subsection 3.02(ii), which outlines the rights provided to disabled occupants to have pets.

<sup>25</sup> Article V, Section 5.01 was amended to replace Chapter 415B, HRS, which has been repealed, with Chapter 414D, its current equivalent.

<sup>26</sup> Article V, Subsection 5.04(b) was amended to replace the word “y” with “by”, to correct a typographical error.

<sup>27</sup> Article V, Section 5.04(d) was amended to add the word “of”, to correct a typographical error.

<sup>28</sup> Article V, Section 5.05 was amended to replace Chapter 415B, HRS, which has been repealed, with Chapter 414D, its current equivalent.

<sup>29</sup> Article V, Section 5.05(d) was amended to change the word “no” to “not”, to correct a typographical error.

<sup>30</sup> Article V, Subsection 5.05(f) was amended by the January 1992 Amendment.

<sup>31</sup> Article VI, Subsection 6.03(d) was amended by the January 1992 Amendment.

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<sup>32</sup> Article VI, Subsection 6.03(i) was added to conform to Section 421J-9, HRS, which requires at least 30 days' written notice prior to an increase in regular assessments.

<sup>33</sup> Article VII, Section 7.01 was amended by the January 1992 Amendment; it was further amended to conform to Section 421J-12(a), HRS, which authorizes the amendment of the governing documents by written consent.

<sup>34</sup> Article VII, Subsection 7.02(a) was amended to conform to Section 421J-10(a), HRS, which adds that the governing documents may also be enforced against an occupant, tenant, employee of a member, or any other person who in any manner may use the property, and requires that the association pay a person's costs and expenses if that person is the prevailing party against the association.

<sup>35</sup> Article VII, Subsection 7.02(f) was added to conform to Section 421J-10(b), HRS, which authorizes a prevailing party to recover its costs, expenses, and attorneys' fees.

<sup>36</sup> Article VII, Subsection 7.02(g) was added to conform to Section 421J-10(c), HRS, which authorizes the board to use a collection agency.

<sup>37</sup> Article VII, Section 7.10 was added by the January 1992 Amendment.

<sup>38</sup> Article VII, Section 7.11 was added by the January 1992 Amendment; it was further amended to create a subsection 7.11(a), replace the Neighborhood Justice Center with its current successor, the Mediation Center of the Pacific, replace Chapter 658, HRS, with Chapter 658A, and to conform to Section 421J-13(a), HRS, which requires mediation only if one party requests it and includes the interpretation of Chapter 421J in the scope of the disputes that need to be mediated.

<sup>39</sup> Article VII, Subsection 7.11(b) was added to conform to Section 421J-13(b), HRS, which provides exclusions from the requirement to mediate disputes.

<sup>40</sup> Article VII, Subsection 7.11(c) was added to conform to Section 421J-13(c), HRS, which states that no further mediation is required if the mediation is not completed within two months of its commencement.

<sup>41</sup> Article VII, Section 7.12 was added to conform to Section 421J-7, HRS, which requires that the Association make certain documents available to the Owners.